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COMMISSION ON HUMAN RIGHTS

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SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 15 February 1991, at 3 p.m.

Chairman: Mr. MARTIUS (Germany)

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The meeting was called to order at 3.20 p.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (agenda item 4) (continued) (E/CN.4/1991/L.2, L.3 and L.7)

1. The CHAIRMAN invited the members of the Commission to consider draft resolutions E/CN.4/1991/L.2, L.3 and L.7. The suggested procedure was that the Commission would first hear any general comments that members wished to make on the draft resolutions before it; it would then vote on the individual draft resolutions, or parts thereof if necessary, after hearing any explanations of vote before the vote on individual texts. Once the voting on all texts had been completed, it would hear explanations of vote after the vote.

Draft resolution E/CN.4/1991/L.2

2. Mr. KHAN (Pakistan), introducing draft resolution E/CN.4/1991/L.2 on behalf of its sponsors, which had been joined by Algeria, Cyprus, Egypt, Jordan, Qatar, Saudi Arabia, Tunisia, United Arab Emirates and Zambia, said that the draft resolution under consideration did not differ substantially from the resolution adopted by the Commission at its forty-sixth session, but some minor changes had been made to reflect new developments with regard to Israeli violations of the human rights of the Palestinian people and the principles of international law.

3. As in previous years, the draft resolution contained two parts, part A dealing with Israeli practices and part B with the applicability of the Fourth Geneva Convention to the occupied Palestinian territories and Israel's continued refusal to respect that Convention or the relevant resolutions of the Security Council, the General Assembly and the Commission on Human Rights.

4. The Commission must take a firm stand on the suffering of the Palestinian people under Israeli occupation, which was a grave violation of human rights, and on Israeli harassment, which constituted war crimes. It was to be hoped that the draft resolution would be adopted by consensus.

5. At the request of the representative of the United States of America, a vote was taken by roll-call on part A of draft resolution E/CN.4/1991/L.2.

6. Peru, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Austria, Bangladesh, Brazil, China, Colombia, Cuba, Cyprus, Ethiopia, Gambia, Ghana, India, Indonesia, Iraq, Madagascar, Mauritania, Mexico, Morocco, Pakistan, Philippines, Senegal, Swaziland, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia, Zambia.

Against: United States of America.

Abstaining: Australia, Belgium, Canada, Czech and Slovak Federal Republic, France, Germany, Hungary, Italy, Japan, Portugal.

7. Part A of draft resolution E/CN.4/1991/L.2 was adopted by 28 votes to 1, with 10 abstentions.

8. At the request of the representative of the United States of America, a vote was taken by roll-call on part B of draft resolution E/CN.4/1991/L.2.

9. Zambia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Brazil, China, Colombia, Cuba, Cyprus, Ethiopia, Gambia, Ghana, India, Indonesia, Madagascar, Mauritania, Mexico, Morocco, Pakistan, Philippines, Senegal, Swaziland, Sweden, Ukranian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia, Zambia.

Against: United States of America.

Abstentions: Australia, Austria, Belgium, Canada, Czech and Slovak Federal Republic, France, Germany, Hungary, Italy, Japan, Portugal.

10. Part B of draft resolution E/CN.4/1991/L.2 was adopted by 26 votes to 1, with 11 abstentions.

11. Draft resolution E/CN.4/1991/L.2, as a whole, was adopted.

12. Mr. MOHAMMED (Iraq) said that, had his delegation been present at the time, it would have voted in favour of part B of draft resolution E/CN.4/1991/L.2.

Draft resolution E/CN.4/1991/L.3

13. Mr. LOEIS (Indonesia), introducing the draft resolution on behalf of its sponsors, which had been joined by Bangladesh, India, Indonesia, Madagascar, Morocco, Pakistan, Qatar, Sudan, Yugoslavia and Zambia, said that the draft resolution emphasized the Commission's deep concern at the human rights situation in the occupied Syrian Arab territory. Although the question had been before the Commission for a number of years, there had been no apparent improvement.

14. The draft resolution once again called upon the Israeli Government to desist from its activities, which contravened all universally recognized norms of international law, in particular the Fourth Geneva Convention, and constituted a flagrant violation of the fundamental rights of the population of the occupied Syrian Arab territory. The measures imposed by Israel had resulted in the effective annexation of the territory. Persons displaced from the occupied Syrian Arab Golan must be allowed to return to their homes and recover their properties.

15. He informed the Commission that the word "colonialist" in operative paragraph 4 should be replaced by the word "settlement".

16. At the request of the representative of the United States of America, a vote was taken by roll-call on draft resolution E/CN.4/1991/L.3.

17. The Czech and Slovak Federal Republic, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Austria, Bangladesh, Brazil, Burundi, China, Colombia, Cuba, Cyprus, Czech and Slovak Federal Republic, Ethiopia, Gambia, Ghana, Hungary, India, Indonesia, Iraq, Madagascar, Mauritania, Mexico, Morocco, Pakistan, Peru, Philippines, Senegal, Swaziland, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia, Zambia.

Against: United States of America.

Abstaining: Australia, Belgium, Canada, France, Germany, Italy, Japan, Portugal.

18. Draft resolution E/CN.4/1991/L.3 was adopted by 32 votes to 1, with 8 abstentions.

Draft resolution E/CN.4/1991/L.7

19. Mr. COURTE (Observer for Luxembourg), introducing draft resolution E/CN.4/1991/L.7 on behalf of its sponsors, which had been joined by Australia, Bangladesh, India, Jordan, Pakistan, Spain, Ukrainian SSR and Zambia, said that the draft resolution recalled that, in accordance with the Universal Declaration of Human Rights, everyone had the right to leave any country including his own and to return to his country and reaffirmed that the Fourth Geneva Convention was applicable to all Palestinian and Arab territories occupied by Israel since 1967, including Jerusalem.

20. It expressed concern at the large-scale establishment of settlers, including immigrants, in the occupied territories by the Israeli Government, which was liable to change the physical character and the demographic composition of the occupied territories. It reaffirmed that the installation of Israeli civilians in the occupied territories was illegal and constituted a violation of the relevant provisions of the Fourth Geneva Convention, regretted that the Government of Israel had not complied with the provisions of resolution 1990/1 adopted at the forty-sixth session of the Commission on Human Rights and urged the Government of Israel to abstain from installing settlers, including immigrants, in the occupied territories.

21. Mr. WALDEN (Observer for Israel) said that, until recently, when his Government raised the subject of Russian Jews wishing to leave the Soviet Union but denied the right to do so, it had met with widespread support in the Commission. It had been a classical instance of human rights abuse. No one had had any doubt that, once those people had been allowed to leave, a very large number of them would wish to go to Israel, and the Commission had repeatedly emphasized their right to do so. Ultimately, those hopes had been realized, and the process had started a little over a year previously. To date, some 200,000 Jewish immigrants had gone to Israel, the vast majority from the USSR and some from Ethiopia and other places.

22. One would have thought that the Commission would rejoice at that great victory in the battle for human rights. Yet, when the wave of immigration had been just beginning, instead of welcoming that development, the Commission had chosen to succumb to Arab pressure and to adopt a resolution calling upon the Government of Israel to refrain from settling the immigrants in the occupied territories.

23. His Government had repeatedly stated that it had no intention of doing so and, of the 200,000 immigrants, only an insignificant number had chosen to settle there. That had not prevented the Commission from adopting a resolution regretting that Israel had not complied with the previous year's resolution.

24. It must be stated categorically once again that his Government had no plan for deliberately settling immigrants in the territories. Needless to say, from the Arab point of view, that was entirely beside the point. What they objected to was Jewish immigration to Israel, and it was all the same to them whether the immigrants settled in Jerusalem, Tel Aviv or the territories: they do not want them there at all.

25. His delegation understood and recognized that that was their position, and at least it was a straightforward one. What was regrettable was the willingness of certain countries to lend their names to an untruthful resolution designed to curry favour at the expense of one of the most significant triumphs of the liberal spirit in the past decade. The resolution would not harm the process of immigration, but it was unworthy of some of the States which had placed their names on it.

26. At the request of the representative of the United States of America, a vote by show of name-plates was taken on draft resolution E/CN.4/1991/L.7.

27. Draft resolution E/CN.4/1991/L.7 was adopted by 38 votes to none, with 1 abstention.

28. Mr. WALKER (Australia), speaking with regard to part A of draft resolution E/CN.4/1991/L.2 in explanation of vote, said that, for many years, his Government had been expressing its concern at human rights violations in the occupied territories, in particular at Israel's decision to resume the practice of deporting Palestinian residents of the territories, its use of detention without trial and the excessive curfew restrictions imposed on Palestinian residents of the territories, notably since the outbreak of the Gulf War. His delegation therefore supported the substance of the resolution, but had been unable to vote in favour of it because it included unnecessarily intemperate language.

29. Mr. STROHAL (Austria), speaking with regard to draft resolutions E/CN.4/1991/L.2 and L.3, said that his delegation's position on the matter under consideration had been a consistent one and it agreed with many, but not all, the elements contained in the draft resolutions. It would have preferred, in operative paragraph 1 of part A of E/CN.4/1991/L.2, the expression "Israeli settlements" to "Jewish settlements", and it could not accept, in operative paragraph 3 of part B of the same draft resolution, the

use of the words "concentration camps". Thus, although his delegation supported that draft resolution as a whole, it had been forced to abstain on its part B.

30. Mr. DUHS (Sweden) said that his delegation had voted in favour of part A and part B of draft resolution E/CN.4/1991/L.2 despite its reservations regarding the strong language contained therein. It objected to the use, in operative paragraph 1 of part A, of the term "Jewish settlements", which should have been replaced by "Israeli settlements". While his delegation was aware of the harsh circumstances under which many Palestinians were being detained, it would have preferred the deletion of the words "concentration camps" in operative paragraph 3 of part B. It interpreted references to "Palestine" to mean the occupied Arab territories. All reaffirmation of previous United Nations resolutions and decisions to which the text referred were relevant only if his delegation had voted in favour of the original texts.

31. Mr. RICUPERO (Brazil) said that his delegation had voted in favour of all the draft resolutions under agenda item 4 because it believed that the situation of human rights in occupied Arab territories continued to warrant monitoring and action by the Commission. It wished to state, however, as it had on previous occasions, that it would have preferred a more balanced wording in certain passages.

32. Mr. KAMINAGA (Japan) said that his delegation had abstained on part A and part B of draft resolution E/CN.4/1991/L.2 because, regrettably, it had not proved possible to secure a suitable wording.

33. Mr. MEZZALAMA (Italy), speaking with respect to draft resolutions E/CN.4/1991/L.2 and L.3 on behalf of the five member States of the European Economic Community that were members of the Commission, said that, despite some improvements in the text, the delegations he represented had reservations about the spirit of the draft resolutions and the inclusion of a number of immoderate terms. Consequently, they had been unable to vote for them.

34. Ms. ANDREYCHUK (Canada) said that her delegation regretted that the unwillingness of the sponsors to negotiate amendments to the draft resolutions had led to a lack of compromise. Draft resolution E/CN.4/1991/L.2 contained some new language, particularly in the eighth preambular paragraph and operative paragraphs 1 and 2 in part A, and operative paragraph 3 in part B, whose inclusion her delegation could not support.

35. With regard to draft resolution E/CN.4/1991/L.3, her delegation likewise regretted the new language used, particularly in the eighth and ninth preambular paragraphs and operative paragraph 4, which had obliged her delegation to abstain, although the text contained many elements with which it could agree.

36. Mr. STIGLICH (Peru) said that, had his delegation been present during the vote on draft resolution E/CN.4/1991/L.2, it would have voted in favour of the text as a whole. However, it thought that some of the paragraphs, including operative paragraphs 3 and 4 of part B, were verbose and contained language not entirely appropriate to such sensitive issues, especially when used of a country with which Peru had diplomatic relations.

37. Mr. PAGAC (Czech and Slovak Federal Republic) said that his delegation had abstained during the vote on draft resolution E/CN.4/1991/L.2, not because of the substance but because it found difficulty with the text in some places. He nevertheless reiterated his delegation's full support for efforts to achieve a just and lasting solution to the problem of occupied Palestine, in accordance with the Charter and the relevant General Assembly resolutions.

38. Mr. ENDREFFY (Hungary) said that his delegation associated itself with those who, although they supported the substance of draft resolution E/CN.4/1991/L.2, had been unable to vote for it on account of the wording used.

39. Mr. KHOURY (Observer for the Syrian Arab Republic) said that his delegation thanked all the members of the Commission which had voted in favour of the draft resolution relating to the situation in Syrian territory occupied by Israel. With reference to the statement made by the representative of Italy on behalf of five European Community members of the Commission, his delegation acknowledged that it was in Syria's interest to pursue a constructive dialogue with those countries.

40. Mr. NZEYIMANA (Burundi) said that his delegation regretted that it had not been present during the vote on draft resolution E/CN.4/1991/L.2; it would have voted in favour of both parts of the text.

41. Mr. ARTEAGA (Venezuela) said that, although his delegation had voted in favour of the draft resolutions tabled under agenda item 4, it would have preferred more appropriate wording for some of the paragraphs.

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 9) (continued) (E/CN.4/1991/L.4, L.5, L.6, L.8/Rev.1 and L.9)

42. The CHAIRMAN invited the Commission to consider the draft resolutions tabled under agenda item 9.

43. Mr. BLAVO (Ghana) said that, at previous sessions of the Commission, the African Group had always presented a draft resolution drawing attention to the South African authorities' violations of human rights throughout southern Africa, including matters such as its illegal occupation of Namibia and its aggression against the front-line States. Namibia had recently acceded to independence, and there were signs that the South African authorities' acts of aggression were lessening - although the situation of the black people in South Africa remained a problem. Therefore, despite certain misgivings that still remained, the African Group had decided not to table such a text under agenda item 9 at the current session; but it reserved its future position in that regard.

44. Mr. PACE (Secretary of the Commission) informed the Commission that the text of draft decision E/CN.4/1991/L.4, concerning the situation in Cambodia, had been slightly revised for technical reasons: the words "and draw up a detailed plan of implementation" were to be replaced by "and that a detailed plan of implementation be drawn up".

45. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt draft decision E/CN.4/1991/L.4, as orally revised, on the situation in Cambodia, draft resolution E/CN.4/1991/L.6 on the situation in Afghanistan, and draft resolution E/CN.4/1991/L.8/Rev.1 on the question of Western Sahara, without a vote.

46. It was so decided.

Draft resolution E/CN.4/1991/L.5

47. Mr. DAYAL (India), introducing draft resolution E/CN.4/1991/L.5, said that a just and lasting peace in the Middle East was impossible unless Israel withdrew from all the territories it occupied, including Jerusalem, and the Palestinians were enabled to exercise their inalienable rights, including the rights of return to their homes, the achievement of national independence and the establishment of a sovereign State on their homeland.

48. The aim of draft resolution E/CN.4/1991/L.5 was to support the efforts to restore those rights as part of the right to self-determination, in accordance with the Charter and the relevant General Assembly resolutions. The sponsors reaffirmed, in its operative paragraph 5, their support for the call to convene an effective international peace conference on the Middle East. In operative paragraphs 6 and 7, Israel was strongly condemned for its continued occupation of the Palestinian territories, and called upon to comply with its obligations under the Charter and to withdraw from the Palestinian and other Arab territories it had occupied since 1967, including Jerusalem, in accordance with the relevant United Nations resolutions.

49. The sponsors, which had been joined by the delegations of Bangladesh and Pakistan and the observers for Algeria, Bahrain, Egypt, Jordan, Qatar, Saudi Arabia, the Syrian Arab Republic, Tunisia, the United Arab Emirates, the United Republic of Tanzania and Zimbabwe, hoped that draft resolution E/CN.4/1991/L.5 would receive the widest possible support.

50. At the request of the representative of the United States of America, a vote was taken by roll-call on draft resolution E/CN.4/1991/L.5.

51. Somalia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Brazil, Burundi, China, Colombia, Cuba, Cyprus, Ethiopia, Gambia, Ghana, India, Indonesia, Iraq, Madagascar, Mauritania, Mexico, Morocco, Pakistan, Panama, Peru, Philippines, Senegal, Swaziland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia, Zambia.

Against: United States of America.

Abstaining: Australia, Austria, Belgium, Canada, Czech and Slovak Federal Republic, France, Germany, Hungary, Italy, Japan, Portugal, Sweden.

52. Draft resolution E/CN.4/1991/L.5 was adopted by 29 votes to 1, with 12 abstentions.

53. Mr. DUHS (Sweden), speaking in explanation of vote, said that his Government had always supported the right of the Palestinian people to self-determination. It had welcomed the declaration of independence proclaimed by the Palestine National Council in December 1988 as well as the Palestine Liberation Organization's recognition of the State of Israel and acceptance of Security Council resolutions 242 (1967) and 338 (1973).

54. Unfortunately, those elements had not been reflected in the text of draft resolution E/CN.4/1991/L.5; that omission, and certain other wording, had resulted in an unbalanced text. Therefore, his delegation had abstained during the vote.

Draft resolution E/CN.4/1991/L.9

55. Mr. PACE (Secretary of the Commission) drew attention to a number of sponsors' revisions, made solely for technical reasons, to the text. The title was to be replaced by: "The use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination". In the first preambular paragraph, the words "the principle that States shall scrupulously refrain in their international relations from the threat or use of force" were to be replaced by "the principle of scrupulously refraining in international relations from the threat or use of force", and the words "in international relations" which immediately followed were to be deleted. In operative paragraph 2, the word "shall" was to be replaced by "should" and in operative paragraph 5, the words "Requests the Secretary-General to report" were to be replaced by "Requests also the Special Rapporteur to submit his report".

56. Mr. OSAKWE (Observer for Nigeria), introducing draft resolution E/CN.4/1991/L.9, reiterated that the revisions just orally announced were purely technical ones aimed at greater consistency and precision. The sponsors' intention was to stress that the persistent use of mercenaries impeded the exercise of the right to self-determination. The purpose of the draft resolution was to establish a basis for international action against such use.

57. The sponsors had endeavoured to streamline the text in order to attract greater support from the Commission's members, some of whom had, at previous sessions, expressed the view that the texts tabled on that subject had been too voluminous. Care had also been taken to align the current text with the wording of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly in its resolution 44/34.

58. The sponsors were grateful to all the members of delegations and representatives of regional groups who had participated in the drafting effort. However, in response to a request received from one delegation, the sponsors, which had been joined by the observers for Cameroon, the Libyan Arab Jamahiriya, the United Republic of Tanzania and Zimbabwe, requested that a decision on the draft resolution be deferred until the following Friday, in the hope that it could be adopted by consensus.

59. Mr. GROLIG (Federal Republic of Germany) expressed his delegation's thanks to the representative of Nigeria and to other African delegations involved in the negotiations on draft resolution E/CN.4/1991/L.9. He thought that the new, constructive spirit evident in the joint efforts was a promising sign for the Commission's future deliberations on all matters relating to southern Africa, in which his delegation was ready to participate positively. His delegation shared the hope that draft resolution E/CN.4/1991/L.9 would attract the widest possible support.

60. The CHAIRMAN said that, if there was no objection, he would take it that the Commission wished to postpone consideration of that draft resolution until the following week.

61. It was so decided.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(agenda item 10) (continued) (E/CN.4/1991/15-17, 19, 20 and Add.1, 49 and 66; E/CN.4/1991/NGO/4, 17, 19-22, 24 and 33; A/45/590 and 633; A/RES/45/142 and 143; E/CN.4/Sub.2/1990/11, 27, 29 and Add.1, 32, 33 and Add.1 and Add.2 and 34; E/CN.4/Sub.2/1989/30/Rev.2)

62. Mr. DAHL (Sweden) said that the reports by the Secretary-General, rapporteurs and working groups provided valuable information for the Commission and others active in the international human rights field. His delegation hoped, therefore, that additional resources would be allocated to the Secretariat with a view to ensuring that high-quality reports would continue to be available.

63. The report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20 and Add.1) and the report of the Special Rapporteur on torture (E/CN.4/1991/17) were particularly valuable. His delegation urged the Secretariat to ensure that such reports were made available to the Commission as early as possible in the future.

64. The Working Group on Enforced or Involuntary Disappearances had proved an important mechanism in drawing international attention to a horrifying practice; and its non-judgemental approach enhanced the value of its report. Although the bulk of the report consisted of details about specific cases, it also discussed the phenomenon in a more conceptual way.

65. His delegation agreed with the Working Croup that the impunity of persons responsible for past disappearances constituted a serious threat to the United Nations' efforts to combat disappearances. As could be seen from paragraphs 406-410 of the report, impunity was perhaps the single most

important factor contributing to the phenomenon of disappearance. Not only civilian or military perpetrators, but subversive groups, too, would become all the more brazen if their acts repeatedly went unpunished, while victims could well be induced to resort to self-help. The result would be increased violence in a country, and that would reinforce impunity.

66. In certain instances, pardon was extended, on political and national security grounds or in furtherance of national reconciliation or peace efforts, to persons responsible for human rights violations, including disappearances. The Working Group found it hard to accept the prevention of further investigation which was a consequence of some such measures, and victims' relatives understandably derived little consolation from such policies (E/CN.4/1991/20, para. 410). In that connection, his Government was deeply concerned about recent amnesties to certain high-ranking military personnel responsible for thousands of cases of disappearances.

67. While the issue of reprisals would be dealt with under another agenda item, he could not refrain from expressing his Government's concern about the incident, described in paragraph 340 of the report, in which a Sri Lankan Member of Parliament had been prevented from providing the Working Group with statements relating to disappearances.

68. The graphs in annex I to the Working Group's report gave a horrifying picture of the phenomenon of disappearances. Over 20,000 cases in some 45 countries had come to the knowledge of the Working Group since its establishment. Even though the trend worldwide during recent years was fortunately downward, some frightening examples of the opposite trend were still at hand. His delegation appealed to the Governments of Colombia, Iran, Peru and Sri Lanka, where the number of disappearances seemed to be increasing, to take firm measures to put an end to those occurrences and to initiate forthwith thorough investigations into the high number of unresolved cases. That appeal applied equally to the Governments of Argentina, El Salvador and Guatemala where high numbers of past disappearances still remained unresolved.

69. One of the most alarming items in the report related to the case of Iraq. A single column in the graph on page 101 represented 2,410 disappearances, most of whom were persons of Kurdish origin taken from the camp at Qushtapa on 30 July 1983. In his delegation's opinion, the Commission owed it to the Kurdish population and to the people of Iraq in general to continue its focus on that terrible event.

70. With regard to the special report of the Working Group on its visits to the Philippines, he expressed his appreciation of the co-operative attitude of the Government of that country and urged it to consider carefully the recommendations contained in the report.

71. Torture could be said to be the most private of human rights violations. As torture was most frequently practised during incommunicado detention, such detention should be declared illegal and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment should be fully respected in practice.

72. His delegation stressed the importance of the Special Rapporteur's practice of sending urgent appeals to Governments. Those appeals were not accusatory in nature but were purely humanitarian. The procedure was an excellent instrument for preventing torture and it was therefore essential that Governments should act upon and respond to such appeals immediately. Noting that two members of the Commission, Peru and Somalia, were among Member States which had not replied to urgent appeals during the past year, his delegation urged all Governments to co-operate fully with the Special Rapporteur.

73. The usefulness of visits to specific countries had been underlined by the Special Rapporteur. His delegation appreciated the co-operation shown to the Special Rapporteur in that regard by the Government of the Philippines and encouraged other Governments to issue such invitations.

74. Torture could never be justified under any circumstances and its prohibition was absolute. In that context, he drew attention to paragraphs 285-287 of the report by the Special Rapporteur which pointed out that torture was, in some cases, used as a political tool by Governments to stifle opposition or crush insurgency.

75. While the Governments concerned endorsed the campaign against torture at the international level, other parts of the same Governments practised or condoned torture at home as a political tool. His delegation fully endorsed the Special Rapporteur's suggestion that the campaign against torture would lose its credibility if such a situation was allowed to continue and that increased pressure should be put on Governments which allowed torture to be used as a political tool.

76. His delegation attached particular importance to the opportunity afforded the Committee to consider communications from or on behalf of individuals by article 22 of the Covention and to the confidential inquiry procedure, including visits to the States concerned, under article 20. It urged States parties which had not yet done so to consider accepting all the functions entrusted to the Committee against Torture under the Convention.

77. The campaign against torture must also include assistance to its victims. His Government thus attached great importance to the United Nations Voluntary Fund for Victims of Torture. It had been contributing to the Fund since 1981 and had recently decided to increase its contribution considerably. It would provide 1 million Swedish kronor, approximately $US 180,000, to the Fund in 1991 and the same amount in the following year. It urged other Governments to contribute to the Fund also.

78. Ms. PERREGAUX (Centre Europe-Tiers Monde) said that her delegation considered it the appropriate moment to provide information on the situation of the Saharan people with regard to disappearances. As was well known, the Working Group on Enforced or Involuntary Disappearances had, on several occasions, requested clarification from the Moroccan Government without receiving any reply. Unless efforts continued to be made, justice would never be done to those missing persons, those prisoners and their families.

79. The most recent detentions dated from the end of 1990 and involved 17 young Saharans, although 15 persons had reappeared. They included a mentally disturbed young man and others in appalling physical condition. It was known that some of the 857 missing persons recorded by the Saharan Red Crescent Society were being held in fortresses to the south of the Atlas Mountains, not far from tourist areas. However, the desperate situation of the missing persons met with indifference.

80. She called on the Commission to do its utmost to ensure that the organizations concerned with the protection of human rights could visit Morocco and the occupied areas of Western Sahara to study the problem of the missing Saharans. It keenly regretted, for example, that the International Federation of Human Rights had not been able to visit Morocco. That situation of obstruction was of concern to her organization and she wondered whether it might not be desirable for the Commission to appoint a commission of inquiry or a special rapporteur to investigate the human rights situation in Morocco and Western Sahara.

81. In the circumstances, her delegation was surprised at the interest shown by the Moroccan Government in the World Conference on Human Rights to be held in 1993. The selection of a host country was a serious matter and, if the State in question was internationally notorious for its lack of respect for human rights, the Conference might lose all its credibility, with dire consequences for the promotion of human rights in the world.

82. Mr. RETUREAU (World Federation of Trade Unions) said that it was his sad duty to return to the Commission with new names to add to the already long list of persons who had disappeared or been summarily executed, tortured, kidnapped or imprisoned. His organization continued to denounce those violations and to defend the most fundamental of human rights.

83. The machinery set up to monitor the correct application of the human rights standards was far from being properly funded and supported. If all Governments were sincerely concerned with respect for human rights, they should honour their obligations towards their citizens and the United Nations by submitting their reports in time and by ensuring that the monitoring bodies and the Centre for Human Rights were adequately financed.

84. However, there was a wide gap in many countries between official statements or legislation and their effective implementation. If that situation was not corrected, the World Conference on Human Rights might produce many fine speeches but few concrete results. In his organization's view, the Conference should be prepared in such a way as to avoid a propaganda and disinformation spectacle and the venue should be selected much more carefully than on the previous occasion. Members should not labour under the illusion that the Conference could be depoliticized, since the question of human rights was the most important political question before the United Nations as it was in the daily life of every citizen.

85. He then proceeded to describe the situation of human rights and to give the names of persons who had disappeared or been subjected to arbitrary arrest, detention and torture in: El Salvador, Iran, Haiti, Argentina, Indonesia, the Philippines, and Morocco.

86. Mr. ZUCKERMAN (International Human Rights Law Group) said that minimum standards for judicial independence and fair legal process were recognized in several international instruments. Nevertheless, freedom from torture and arbitrary detention remained illusory for many, because the integrity of the judiciary and the legal profession was compromised.

87. In the case of China, the imprisonment and trials of pro-democracy activists there since the 1970s revealed a consistent pattern of gross and reliably attested violations of basic human rights. The arrest, detention, trial and sentencing of such activists fell far short of the minimum internationally recognized standards. Reports that families of the accused had been denied information regarding the time or place of detention raised the question whether violations of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rightshad occurred.

88. Certain individuals were still serving prison terms for the non-violent expression of their political views in connection with democracy activities of more than 10 years previously.

89. According to reliable reports, the trials of the pro-democracy activists had been closed to the public and, in some cases, to the families of the accused. Defendants had been denied the right to choose their own lawyers and had been permitted legal consultation only after indictments had been filed. The lawyers of the defendants were reportedly barred from examining or calling witnesses and were permitted only defences which assumed the defendant's guilt and required him to plead for leniency. Such a system had been referred to as "verdict first, trial second".

90. His organization was seriously concerned at the disproportionate nature of the sentencing of the activists. According to reports, the Chinese Government had judicially executed at least 39 people accused of minor violent crimes in connection with the 1989 demonstrations, sentenced 70 others to death, and conducted approximately 100 secret executions since June 1989. The Government had imposed harsh sentences on those convicted of "counter-revolutionary" offences who reportedly had shown no repentance. Conversely, much had been made of the few light sentences, including a recently reported "exemption" from punishment, for those who had "repented" of what was an internationally protected right: the peaceful expression of political opinion.

91. His organization was concerned at the fact that the judicial system in Kenya was liable to coercion by the President and by the country's sole legal political party, despite a December 1990 constitutional amendment purporting to restore judicial independence by allowing removal of judges only on the recommendation of a special tribunal. However, the new tribunal was appointed by the President and served at his pleasure.

92. There was evidence that the decade-long encroachment on Kenya's judicial independence was continuing. In October 1990, two attorneys for human rights defendants had been imprisoned and charged with treason. Repeated complaints of torture had brought no independent inquiries and, contrary to constitutional provisions, prisoners alleging violations of human rights had been denied access to the High Court.

93. The Law Group respectfully requested the Commission to call on the Governments of the People's Republic of China and Kenya to act in conformity with international standards of judicial independence and fair legal process; and to request the Government of the People's Republic of China to release unconditionally those prisoners detained or sentenced solely on account of the peaceful expression of their political opinions.

94. His organization believed that further study of acts of public governance which provided impunity to violators of human rights, such as the right to be free from torture, involuntary disappearances and summary execution, would be of great use to the Committee.

95. Publicly granted amnesties precluded victims of human rights abuse or their relatives from instituting civil suits against the security forces or other former government officials. While amnesty for certain criminal offences might be the prerogative of Government, no such prerogative existed where the effects of that measure deprived the victims of domestic legal redress for rights protected by international human rights instruments.

96. The Inter-American Court of Human Rights had held that the dual obligation of States parties to the Inter-American Convention to "respect" and "ensure" rights recognized under the Convention imposed an affirmative duty to prevent, investigate and punish any violation of those rights. The Court had also found that such obligation required Governments to attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.

97. It would seem, therefore, that an amnesty law or similar public act that foreclosed civil claims for compensation by victims would violate the State's obligations under the Inter-American Convention. Precluding such a civil remedy to the victims would render illusory the State's obligation to respect and ensure rights guaranteed under the Convention.

98. In conclusion, he asked the Commission to consider such questions as whether there was or should be different legal effects accorded to amnesties granted to State agents by de facto military régimes from those granted by elected civil Governments and whether a Government was in compliance with its obligations under international law if the effects of an amnesty were to preclude investigation and prosecution of State agents who ordered or perpetrated violations of human rights.

99. Mr. PHILIPS (Minority Rights Group) said that the Group wished to express its serious concern at the continuing practice of the detention and imprisonment of asylum-seekers in some European States. A study commissioned by the Group on refugees in Europe contained some disturbing evidence that asylum-seekers were being detained incommunicado for substantial periods at ports of entry, were being held in ships and were being housed in tents in subzero temperatures.

100. His Group welcomed the fact that some European States were willing to grant asylum to a greater number of refugees, although other European States were attempting to restrict the number of asylum-seekers by various means.

European States which used the 1951 Convention relating to the Status of Refugees and the 1967 Protocol as the basis for their decisions on the status of asylum-seekers should also note Conclusion No. 44 of the thirty-seventh session of the Executive Committee of the United Nations High Commissioner for Refugees in 1986.

101. Although some European countries had legal provisions for the detention of asylum-seekers, it was extremely difficult to determine the number of persons treated in that way. While it was undoubtedly small in relation to the total number of asylum-seekers (approximately one quarter of a million in 1990), it was unfortunate that there were no consistent records so that the practice could be monitored.

102. Asylum-seekers were fleeing persecution and torture and it was cruel, indeed, for them to be imprisoned in a country which they had originally perceived as a safe haven. Asylum-seekers might suffer from intense depression aggravated by official indifference, lack of care, language barriers and sometimes, solitary confinement. There had been several cases of suicide by detained asylum-seekers.

103. Even where the conditions of detention were acceptable, there were still grave doubts concerning the practice of detaining asylum-seekers. In some European States, they were detained in ordinary prisons when detention centres were full. Asylum-seekers and refugees were not criminals, and they should not be detained or subjected to unreasonable restrictions on their movements.

104. His Group therefore urged the Commission to direct all European Governments to treat such persons in a positive and non-discriminatory manner. States which continued to detain asylum-seekers must ensure that they maintained the strictest legal safeguards and must modify their practices to comply with the Convention relating to the Status of Refugees of 1951, the Protocol to that Convention of 1967 and human rights standards within the United Nations system in general. Furthermore, he emphasized the need for records to facilitate monitoring of detention practices with regard to asylum-seekers. Such practices should also be considered by the Special Rapporteur on detention.

105. Ms. GRAF (International League for the Rights and the Liberation of Peoples) said that her organization had been concering itself with the human rights situation in Zaire since 1982 and had made comments in that regard to the Commission at several of its sessions.

106. In 1986, the League had welcomed the establishment in Zaire of the Ministry for the Rights and Freedoms of Citizens. Despite the official promises, however, many cases of imprisonment and detention without trial, ill-treatment and violation of freedom of expression had come to the attention of her organization since then.

107. In May 1990, the National Security Council had announced that secret detention and the practice of internal exile would be abolished, but those measures had yet to be implemented.

108. The League was concerned at the fact that members of the security forces continued, with utter impunity, to use extreme violence against peaceful demonstrators and political opponents. Requests that the Government should conduct an inquiry into those incidents had been ignored and the Minister for the Rights and Freedoms of Citizens seemed unwilling to adopt disciplinary measures against the security forces.

109. From 1988 to 1990, the majority of arbitrary arrests, cases of detention without charges or trial and ill-treatment had concerned known or suspected, members of the Union for Democracy and Social Progress (UDPS), particularly, Thisekedi Wa Mulumba, one of its leaders, who had spent nearly 20 months in internal exile or restricted residence.

110. On 17 January 1989, opponents of the Government who had sought to commemorate the anniversary of the assassination of Patrice Lumumba had been arrested. More than 12 persons attending a gathering organized by UDPS at Kinshasa had been arrested by the Military Action and Information Service (SARM). One of the women had been taken into custody with her baby. The members of SARM had beaten the prisoners and taken them first to a detention centre and later, during the night, to a military firing range where they had been beaten again.

111. At the end of April 1990, a number of journalists for the State-owned radio and television services had been beaten and detained for several days, reportedly because they had interviewed a leader of the opposition concerning the reforms announced by President Mobutu. Upon their release, they were said to have been warned that they would be rearrested if they revealed the conditions of their detention.

112. Women had not been spared ill-treatment by the Zairian authorities. In April 1988, several dozen women who had taken part in a peaceful demonstration near the United States Embassy at Kinshasa had been arrested and violently beaten by the security forces; some of them had even been raped. At the end of 1988, at least four of them had continued to be secretly detained by SARM. More than 10 of them had been exiled to rural areas until the end of 1989, and of those, at least nine had been rearrested by SARM in 1990 and forced to leave Kinshasa.

113. On 30 May 1990, Digekisa Piluka, a student leader at Lubumbashi University, had been arrested and charged with being the instigator of the student demonstrations which had been repressed by President Mobutu's special forces during the night of 11-12 May 1990. Digekisa Piluka, who had gone into hiding after the attack, was still being held without charge at the Makala prison at Kinshasa. The same was true of Banza Kakese, editor-in-chief of the newspaper La Semaine, who was said to have been detained for several days in June 1990 for having published an article stating that top government officials had had prior knowledge of the attack on the Lubumbashi campus, in which more than 100 students had been killed.

114. According to Zairian sources, some members of regional authorities implicated in the massacre were tried secretly at the Makala prison. Such a procedure was of great concern, since her organization had recently learned

that the Zairian Government intended to invite a representative of the United Nations Human Rights Committee to monitor the trial of those allegedly responsible for the massacre. In her view, the presence of foreign observers at that trial would constitute an endorsement of the Government's version of what had occurred.

115. In view of the foregoing, the League had greeted with scepticism the recent announcement by President Mobutu of a general amnesty for Zairians convicted of crimes of opinion.

116. Mr. MUSTELIER NUEVO (International Association of Educators for World Peace) said that he had spent 20 of his 48 years as a political prisoner in Cuba. During the previous session of the Commission, he had been on a hunger strike, demanding to be released since he had served his sentence under Cuban law. Five months later, he had finally been released. He thanked the many delegations whose efforts had led to his release and enabled him to testify to the past, current and future suffering of thousands of political prisoners in Cuba's gaols.

117. In Guanajay prison, after a violent interrogation, he had been beaten and kicked, resulting in fractures of his skull and lower jaw. In Morro and La Cabaña prisons, he and other political prisoners had been deprived of water, light or food. In Combinado del Este prison, when he had demanded medical attention for his friend Roberto Dieguez Garcia Pollato, a guard had stabbed him with a bayonet under the right eye, resulting in a partial loss of vision.

118. The methods used in Cuban prisons had as their primary objective the annihilation of all resistance, both physical and moral. Even as he spoke, a group of political prisoners who had been transferred to Kilo 7 prison had been placed in solitary confinement, beaten and chained to the bars of their cell.

119. In speaking of political prisoners in Cuba, special mention should be made of the so-called "plantados", or intransigents, prisoners who had never abandoned their principles, who maintained an unshakeable attitude towards the Government and prison authorities and who were especially punished for doing so. Among them was Mario Chanes de Armas, who had the sad distinction of being the most senior political prisoner in the world, having been incarcerated for 29 years and 7 months. He latter had accompanied Fidel Castro in the assault on the Moncada barracks and in the Granma landing.

120. In Cuba, torture was not only the standard practice in political prisons; it was implanted in Cuban society. Cuban citizens were psychologically tortured by not being allowed freedom of movement within the country or the right to travel and emigrate. They were tortured by the constant threat of punishment should they attempt to establish an organization of any nature and by living under a system in which citizens habitually informed on one another at the instigation of the Government.

121. Mr. TALAVERA (Commission of the Churches on International Affairs) said that his organization remained extremely concerned at the violations of human rights associated with detention, the torture of prisoners and enforced

disappearances. It firmly supported the efforts of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on summary or arbitary executions and the Special Rapporteur on torture and urged the Commission to establish more effective machinery for following up on their recommendations.

122. It also called for a substantial increase in funding which would permit a larger number of on-site visits. The appointment of experts or special rapporteurs for countries in which systematic violations of human rights occurred could further enhance efforts in that area.

123. The draft declaration on the protection of all persons against enforced or involuntary disappearances was a very important text and he urged its adoption by the Commission.

124. He drew the attention of the Commission to the problem of illegal detention in the Philippines. On 9 July 1990, the Supreme Court had decided that rebellion and subversion were ongoing crimes and had therefore authorized the police to detain individuals without an arrest warrant on the basis of suspicion of subversive activities. His organization feared that such a decision could lead to abuses of basic rights, since anyone could be suspected of rebellion, evidence could be easily manipulated, illegal detention facilitated torture and the institution of habeas corpus did not appear to be functioning effectively as a remedy for violations of the right to due process. His organization's member church in the Philippines interpreted illegal detentions as a de facto return to martial law.

125. His organization was also very concerned at the situation of prisoners of conscience in South Korea. According to the National Council of Churches of Korea, 1,746 persons had been officially detained in 1990 for crimes of opinion, a 50 per cent increase over the previous year.

126. The situation of human rights in Peru was also alarming. According to official data, some 20,000 persons had lost their lives because of political violence since 1980. It was estimated that more than 3,000 persons had "disappeared" since 1983.

127. With the installation of the new Government of President Fujimori, who had promised in his election campaign to respect human rights, it had been hoped that abuses by members of the security forces would cease and that Peru would respect the provisions of the International Covenants on Human Rights. Despite the difficult situation of political violence prevailing in the country, no State could justify violations of the law and of the International Covenants on the grounds of its struggle against armed groups.

128. To date, however, the anti-subversive strategy did not seem to have changed and the violations of the previous decade appeared to be continuing. Thus, at Ayacucho, in October 1990, mass graves had been discovered, containing the corpses of 18 persons, including 5 minors, who had been arrested on 21 and 22 September 1990, by soldiers of the Castropampa barracks and had "disappeared".

129. The military barracks in the areas under the state of emergency were used as clandestine detention centres where presumed terrorists were subjected to brutal interrogations, frequently ending in disappearances or extra-judicial executions.

130. To date, the new Government had shown no inclination to punish those responsible for human rights violations. Furthermore, in December 1990 President Fujimori had issued Supreme Decree 171-90, establishing military tribunals and authorizing "confidential identity" for all crimes that might be committed by soldiers in the areas under the state of emergency. His organization had noted with satisfaction that the Peruvian Congress had just invalidated that decree.

131. He urged the Commission to adopt suitable measures for dealing with the situation in Peru, including the appointment of an expert or special rapporteur for that country.

132. Mr. WANG Xuexian (China), speaking in exercise of the right of reply, said that his delegation would ask the Under-Secretary-General for Human Rights to circulate a document on his country's judicial system and would, in due course, answer the allegations made with regard to the recent trials of law-breakers there.

133. Mr. ROA KOURI (Cuba), speaking in exercise of the right of reply, said that Mr. Mustelier Nuevo had been condemned to 25 years in prison for crimes against the integrity and stability of the nation, murder and complicity. Together with other counter-revolutionaries, he had stolen weapons from a technical institute, attacked troops stationed on the frontiers and stolen a boat with the aim of leaving the country illegally. When that plan had failed, he had gone to Havana, where he had murdered a staff member of the National Institute of Tourism. In January 1987, while in prison, he had attacked another prisoner who had expressed his gratitude to the authorities for the humane treatment he had received.

134. There was no torture in Cuba, a fact which had been demonstrated by the 1988 report of the International Association against Torture.

135. With regard to the counter-revolutionary Mario Chanes, who had taken part in a conspiracy to assassinate the then Prime Minister of Cuba, Mr. Fidel Castro, it was obvious that, in any country of the world, terrorists and assassins were sent to prison, after being tried in accordance with the law.

136. As for the so-called "plantados", they were simply a group of persons who refused to wear prison uniform. In other countries, particularly the United States, prison regulations were enforced, but in Cuba, such persons had been tolerated and allowed to wear whatever they liked.

The meeting rose at 6.05 p.m.